



SPILMAN THOMAS & BATTLE, PLLC

ATTORNEYS AT LAW

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July 27, 2005

**VIA FEDERAL EXPRESS**

Mr. Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, D.C. 20423

RECORDATION NO. 25 735 FILED

JUL 28 '05

3-55 PM

SURFACE TRANSPORTATION BOARD

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a) please find one original and one copy of an Assignment of Rents and Leases, dated as of July 26, 2005, a primary document as defined in the Board's Rules for the Recordation of Documents.

The names and addresses of the parties to the enclosed document are:

Secured Party: Fifth Third Bank  
999 4<sup>th</sup> Avenue  
Huntington, West Virginia 25701

Debtor: Rail Connection, Inc.  
2418 Grant Avenue, Suite A  
St. Albans, WV 25177

A description of the railroad equipment covered by the enclosed document is:

202 three pocket, 4,000 cubic capacity, 100-ton load limit, steel open top hopper railcars within the series YB 6000 to YB 6002; YB 6004 to YB 6007; YB 6010 to YB 6050; YB 6052 to YB 6077; YB 6079 to YB 6086; YB 6088 to YB 6098; YB 6100 to YB 6116; YB 6118 to YB 6123; YB 6126 to YB 6130; YB 6132 to YB 6137; YB 6139 to YB 6144; YB 6147 to YB 6151; YB 6154 to YB 6161; YB 6163 to YB 6172; YB 6174 to YB 6181; YB 6183 to YB 6197; YB 6199 to YB 6202; YB 6205 and YB 6206; YB 6208 to YB 6211; YB 6214; YB 6216 and YB 6217; YB 6219 to YB 6223; YB 6225; YB 6227 to YB6230 as more particularly set forth in the equipment schedule attached to the document.

Spilman Center 300 Kanawha Boulevard, East Post Office Box 273 Charleston, West Virginia 25321-0273  
www.spilmanlaw.com 304.340.3800 304.340.3801 fax

Charleston

Morgantown

Parkersburg

Pittsburgh

Weirton

Mr. Vernon A. Williams  
July 27, 2005  
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A short summary of the document to appear in the index is:

Assignment of Rents and Leases.

Also enclosed is a check in the amount of \$33.00 payable to the order of the Surface Transportation Board covering the required recordation fee.

Kindly return a stamped copy of the enclosed document to the undersigned in the enclosed self-addressed stamped envelope.

Very truly yours,



Angela F. Hill

AFH/tlh/366779  
Enclosures

JUL 28 '05

3-55 PM

**ASSIGNMENT OF RENTS AND LEASES**

SURFACE TRANSPORTATION BOARD

This Assignment, made this 26<sup>th</sup> day of July, 2005, is by and between **Rail Connection, Inc.**, a West Virginia corporation with its principal place of business at 2418 Grant Avenue, Suite A, St. Albans, West Virginia 25177 ("Borrower"), and **Fifth Third Bank**, an Ohio banking corporation with its principal place of business located at 999 4<sup>th</sup> Avenue, Huntington, West Virginia 25701 ("Assignee").

**WHEREAS**, pursuant to that certain Loan Agreement dated July 26, 2005, between Borrower and Assignee (hereinafter sometimes called the "Loan Agreement"), Borrower has agreed to grant Assignee a first lien security interest on all of Borrower's right, title and interest in and to two hundred two (202) 1981 built, 100-ton, all steel 52' mill gondola rail cars (the "Collateral"), all as more particularly defined and described in the Security Agreement from Borrower to Assignee, dated July 26, 2005 (the "Security Agreement"), to secure Assignee in payment of a certain promissory note of even date herewith, executed by Borrower in the principal amount of \$4,800,000, payable to the order of Assignee (hereinafter sometimes called the "Note"), the payment of any and all renewals or extensions of said Note, however changed in form, manner or amount, and the payment of all Obligations of Borrower to Assignee under the Loan Agreement, reference to which Security Agreement and Loan Agreement are here made for a particular description of the property thereby conveyed, the Note and Obligations thereby secured and for all other pertinent purposes;

**WHEREAS**, the Security Agreement grants a first lien on the Collateral in favor of Assignee;

**WHEREAS**, in order to further secure Assignee in the payment of the indebtedness evidenced by the Note and the other Obligations of Borrower to Assignee, Borrower desires to assign to Assignee all sums now due and payable or hereafter to become due

and payable to Borrower under its Agreement with The Ohio Central Railroad System, dated June 29, 2005, and any presently existing or future leases with respect to the Collateral and any and all renewals or extensions thereof (collectively hereafter referred to as the "Leases"), all as hereinafter provided.

**NOW, THEREFORE, THIS AGREEMENT WITNESSETH**, that for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Borrower does hereby bargain, sell, transfer, assign, convey, set over and deliver unto Assignee all right, title and interest of the Borrower in, to and under the Leases including any and all future leases hereinafter entered into by Borrower relating to the Collateral and all amendments, extensions and renewals of said Leases and all rents, income and profits which may now or hereafter be or become due or owing under the Leases or on account of the use of the Collateral.

This Assignment is given and intended as continuing collateral for the payment of all of the Obligations of the Borrower to Assignee as provided for in the Loan Agreement, Note and Security Agreement, including any and all interest thereon and expenses therefor and any and all extensions and/or renewals of the referenced Obligations, whether such Obligations shall at any time or from time to time have been reduced or paid in full and thereafter increased or re-incurred, and no renewal of, or extension of time of payment of the subject indebtedness or any part thereof, and no agreement not to sue or release or discharge any person liable therefor or thereon, or release or exchange of other collateral or any act or thing whatsoever shall diminish, discharge, impair or affect this Assignment or the security afforded hereby, save payment in full by the Borrower to Assignee of all Obligations under the Loan Agreement, the Note, and the Security Agreement. If payment of all such Obligations is made in full by the Borrower and no default thereunder exists, the Borrower shall be entitled to have this Assignment discharged.

Borrower warrants, covenants and agrees with Assignee as follows:

1. That it is the sole owner of the entire Lessor's interest in the Leases, and that it has not and shall not execute any other assignment of any of the Leases or the rents, income and profits accruing from the Collateral, and that it has not and shall not perform any acts or execute any other instruments which might prevent Assignee from fully exercising its rights under any of the terms, covenants and conditions of this Assignment.

2. That the Leases are, or in the case of future Leases will be, valid and enforceable in accordance with their terms and have not been altered, modified, amended, terminated, renewed nor have any of the terms and conditions thereof been waived in any manner whatsoever except as approved in writing by Assignee and shall not be altered, modified, amended, terminated, renewed or any term or condition thereof be waived without the prior written approval of Assignee.

3. That there are no defaults now existing under the Leases and there exists no state of facts which, with the giving of notice or lapse of time or both, would constitute a default under any of the Leases; and that Borrower will fulfill or perform each and every condition and covenant of the Leases by Lessor to be fulfilled or performed, give prompt notice to Assignee of any notice of default by Borrower under the Leases received by Borrower, together with a complete copy of any such notice. Borrower shall, at the sole cost and expenses of Borrower, enforce, short of termination of the Leases, the performance or observance of each and every covenant and condition of such Lease by the other parties thereto.

4. Notwithstanding any provision of the Leases to the contrary, upon the occurrence of a default under said Leases, Borrower shall take no action to effect a termination of the Leases without first giving to Assignee written notice thereof and a reasonable time thereafter within which either (i) to take appropriate action to cure the default; (ii) to obtain

possession of the Collateral (including possession by a receiver); or (iii) to institute, prosecute and complete foreclosure proceedings or otherwise acquire the Collateral with diligence.

5. That it has not and shall not collect, or accept payment of, rent under the Leases more than one month in advance.

6. That it shall not, without the prior written consent of Assignee, enter into any other Leases of all or any part of the Collateral.

7. That it shall and does hereby assign and transfer to the Assignee any and all subsequent leases of all or any part of the Collateral, and shall execute and deliver at the request of Assignee all such further assurances and assignments as Assignee shall from time to time require or deem necessary.

The parties further agree as follows:

With respect to the Leases, this Assignment is absolute and is effective immediately. Notwithstanding the foregoing, until notified by the Assignee in writing that a default has occurred under the terms and conditions of the Note, the Security Agreement or the Loan Agreement or any other instrument constituting additional security for the Note, Borrower may at its option receive, collect and enjoy the rents, income and profits accruing from the Collateral.

In the event of any default in the Note, the Security Agreement, the Loan Agreement or any other instrument constituting additional security for the Note, Assignee may, at its option, receive and collect all such rents, income and profits as they become due, from the Collateral and under any and all Leases of all or any part of the Collateral. Assignee shall thereafter continue to receive and collect all such rents, income and profits, as long as such default or defaults shall exist, and during the pendency of any foreclosure proceedings.

Borrower hereby appoints Assignee its true and lawful attorney with full power of substitution and with power for Assignee in its own name, and capacity or in the name and capacity of Borrower in the event of default to demand, collect, receive and give complete acquittance for any and all rents, income and profits accruing from the Collateral, and at Assignee's discretion to file any claim or take any other action or proceeding and make any settlement of any claims, either in its own name or in the name of Borrower or otherwise, which Assignee may deem necessary or desirable in order to collect and enforce the payment of the rents, income and profits.

Assignee is hereby vested with full power to use all measures, legal and equitable, deemed by it necessary or proper to enforce this Assignment and to collect the rents, income and profits assigned hereunder, including the right of Assignee or its designee to take possession of all or any part of the Collateral, together with all personal property, documents, books, records, papers and accounts of Borrower relating thereto, and may exclude the Borrower, its agents, or servants wholly therefrom. Borrower hereby grants full power and authority to Assignee to exercise all rights, privileges and powers herein granted at any and all times hereafter, without notice to Borrower with full power to use and apply all of the rents and other income herein assigned to the payment of the costs of managing and operating the Collateral and of any indebtedness or liability of Borrower to Assignee, including but not limited to the payment of taxes, special assessments, insurance premiums, damage claims, the costs of maintaining, repairing, and restoring the Collateral, attorneys' fees incurred in connection with the enforcement of this Assignment, and of principal and interest payments due from Borrower to Assignee pursuant to the Note, the Loan Agreement and the Security Agreement, all in such order as Assignee may determine. Assignee shall be under no obligation to exercise or prosecute any of the rights or claims assigned to it hereunder or to perform or carry out any of the

obligations of the lessor under the Leases and does not assume any of the liabilities in connection with or arising or growing out of the covenants and agreements of Borrower in any Lease. Borrower hereby agrees to indemnify Assignee and to hold it harmless from any liability, loss or damage, including, without limitation, reasonable attorneys' fees which may or might be incurred by it under any Lease or by reason of this Assignment, and from any and all claims and demands whatsoever which may be asserted against Assignee by reason of any alleged obligations or undertakings on its part to perform, or discharge any of the terms, covenants or agreements contained in any Lease. It is further understood that this Assignment shall not operate to place responsibility for the control, care, management or repair of the Collateral, or parts thereof, upon Assignee nor shall it operate to make Assignee liable for the performance of any of the terms and conditions of any Lease, or for any waste of the Collateral by Borrower or any other party under any Lease, or for any dangerous or defective condition of the Collateral or for any negligence in the management, upkeep, repair or control of the Collateral resulting in loss or injury or death to any lessee, licensee, employee or stranger.

Assignee may take or release other security, may release any party primarily or secondarily liable for any indebtedness secured hereby, may grant extensions, renewals or indulgences with respect to such indebtedness and may apply any other security therefor held by it to the satisfaction of such indebtedness without prejudice to any of its rights hereunder.

Assignee may, at its option, although it shall not be obligated so to do, perform any Lease covenant for and on behalf of the Borrower and any monies expended in so doing shall be chargeable with interest to the Borrower and added to the indebtedness secured hereby.

Waiver or acquiescence by Assignee in any default by the Borrower, or failure of the Assignee to insist upon strict performance by the Borrower of any warranties or agreements



in this Assignment, shall not constitute a waiver of any subsequent or other default or failure, whether similar or dissimilar.

The rights and remedies of Assignee under this Assignment are cumulative and are not in lieu of, but are in addition to any other rights or remedies which Assignee shall have under the Note, the Security Agreement and the Loan Agreement, or any other instrument constituting security for the Obligations, or at law or in equity.

If any term of this Assignment, or the application thereof to any person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this Assignment, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Assignment shall be valid and enforceable to the fullest extent permitted by law.

Whenever, pursuant to this Assignment, consent by Assignee is necessary for the taking of any action, such consent shall not be unreasonably withheld.

**WITNESS** the following signatures as of the 26<sup>th</sup> day of July, 2005.

**RAIL CONNECTION, INC.**

By: 

W. Kurt Higginbotham  
Its: Vice President

**FIFTH THIRD BANK**

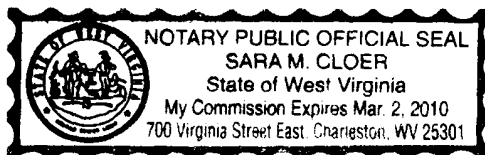
By: 

Jeff A. Vickers  
Its: Vice President

STATE OF WEST VIRGINIA )  
 ) ss.  
COUNTY OF KANAWHA )

On this 26<sup>th</sup> day of July, 2005, before me personally appeared W. Kurt Higginbotham, to me personally known, who being by me duly sworn, says that he is the Vice President of Rail Connection, Inc., a West Virginia corporation, that the foregoing instrument was signed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(Seal)



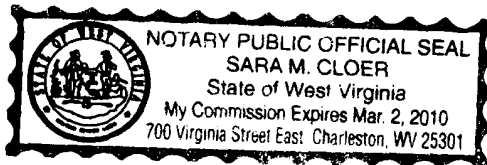
Sara M Cloer  
Notary Public

My commission expires: March 2, 2010

STATE OF WEST VIRGINIA )  
 ) ss.  
COUNTY OF KANAWHA )

On this 26<sup>th</sup> day of July, 2005, before me personally appeared Jeff A. Vickers, to me personally known, who being by me duly sworn, says that he is the Vice President of Fifth Third Bank, an Ohio banking corporation, that the foregoing instrument was signed on behalf of said banking corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(Seal)



Sara M Cloer  
Notary Public

My commission expires: March 2, 2010

# Schedule of Rail Cars

Two Hundred Two 1981-built, 100-ton, all steel 52' mill gondola rail cars, as follows:

<u>Count</u>	<u>Car Mark</u>	<u>Count</u>	<u>Car Mark</u>	<u>Count</u>	<u>Car Mark</u>	<u>Count</u>	<u>Car Mark</u>	<u>Count</u>	<u>Car Mark</u>
1	YB 6000	43	YB 6045	85	YB 6090	127	YB 6137	169	YB 6187
2	YB 6001	44	YB 6046	86	YB 6091	128	YB 6139	170	YB 6188
3	YB 6002	45	YB 6047	87	YB 6092	129	YB 6140	171	YB 6189
4	YB 6004	46	YB 6048	88	YB 6093	130	YB 6141	172	YB 6190
5	YB 6005	47	YB 6049	89	YB 6094	131	YB 6142	173	YB 6191
6	YB 6006	48	YB 6050	90	YB 6095	132	YB 6143	174	YB 6192
7	YB 6007	49	YB 6052	91	YB 6096	133	YB 6144	175	YB 6193
8	YB 6010	50	YB 6053	92	YB 6097	134	YB 6147	176	YB 6194
9	YB 6011	51	YB 6054	93	YB 6098	135	YB 6148	177	YB 6195
10	YB 6012	52	YB 6055	94	YB 6100	136	YB 6149	178	YB 6196
11	YB 6013	53	YB 6056	95	YB 6101	137	YB 6150	179	YB 6197
12	YB 6014	54	YB 6057	96	YB 6102	138	YB 6151	180	YB 6199
13	YB 6015	55	YB 6058	97	YB 6103	139	YB 6154	181	YB 6200
14	YB 6016	56	YB 6059	98	YB 6104	140	YB 6155	182	YB 6201
15	YB 6017	57	YB 6060	99	YB 6105	141	YB 6156	183	YB 6202
16	YB 6018	58	YB 6061	100	YB 6106	142	YB 6157	184	YB 6205
17	YB 6019	59	YB 6062	101	YB 6107	143	YB 6158	185	YB 6206
18	YB 6020	60	YB 6063	102	YB 6108	144	YB 6159	186	YB 6208
19	YB 6021	61	YB 6064	103	YB 6109	145	YB 6160	187	YB 6209
20	YB 6022	62	YB 6065	104	YB 6110	146	YB 6161	188	YB 6210
21	YB 6023	63	YB 6066	105	YB 6111	147	YB 6163	189	YB 6211
22	YB 6024	64	YB 6067	106	YB 6112	148	YB 6164	190	YB 6214
23	YB 6025	65	YB 6068	107	YB 6113	149	YB 6165	191	YB 6216
24	YB 6026	66	YB 6069	108	YB 6114	150	YB 6166	192	YB 6217
25	YB 6027	67	YB 6070	109	YB 6115	151	YB 6167	193	YB 6219
26	YB 6028	68	YB 6071	110	YB 6116	152	YB 6168	194	YB 6220
27	YB 6029	69	YB 6072	111	YB 6118	153	YB 6169	195	YB 6221
28	YB 6030	70	YB 6073	112	YB 6119	154	YB 6170	196	YB 6222
29	YB 6031	71	YB 6074	113	YB 6120	155	YB 6171	197	YB 6223
30	YB 6032	72	YB 6075	114	YB 6121	156	YB 6172	198	YB 6225
31	YB 6033	73	YB 6076	115	YB 6122	157	YB 6174	199	YB 6227
32	YB 6034	74	YB 6077	116	YB 6123	158	YB 6175	200	YB 6228
33	YB 6035	75	YB 6079	117	YB 6126	159	YB 6176	201	YB 6229
34	YB 6036	76	YB 6080	118	YB 6127	160	YB 6177	202	YB 6230
35	YB 6037	77	YB 6081	119	YB 6128	161	YB 6178		
36	YB 6038	78	YB 6082	120	YB 6129	162	YB 6179		
37	YB 6039	79	YB 6083	121	YB 6130	163	YB 6180		
38	YB 6040	80	YB 6084	122	YB 6132	164	YB 6181		
39	YB 6041	81	YB 6085	123	YB 6133	165	YB 6183		
40	YB 6042	82	YB 6086	124	YB 6134	166	YB 6184		
41	YB 6043	83	YB 6088	125	YB 6135	167	YB 6185		
42	YB 6044	84	YB 6089	126	YB 6136	168	YB 6186		